

REMARKS

Claims 1 through 24 remain in the application.

Attached to this Amendment is a copy of the corrected drawings approved by the Examiner incorporating the addition of reference numeral "47". It is respectfully submitted that the attached drawings are acceptable.

Claims 1 through 24 were rejected under 35 U.S.C. § 103 as being unpatentable over allegedly admitted prior art. Applicants respectfully traverse this rejection.

The Background of the Invention section of the present application discloses an example of a wood chipper such as in U.S. Patent No. 5,988,539 to Morey. In this patent, the wood chipper includes an infeed hopper, feed wheel assembly, and a cutting assembly having a rotatable disc with at least one knife or blade for chipping the wood entering the wood chipper and reducing it to wood chips. Typically, the wood chipper includes an infeed pan pivotally connected to the infeed hopper, which is raised and lowered by an operator to allow wood material to be placed on the infeed pan before entering the infeed hopper. However, this patent does not disclose at least one assist member connected to an assist mount and to operatively engage an infeed pan to assist an operator in moving a bulk weight of the infeed pan when the infeed pan is raised to a generally vertical position and lowered to a generally horizontal position by the operator.

In contradistinction, claim 1 claims the present invention as a wood chipper including a movable infeed pan and at least one assist mount connected to the wood chipper. The wood chipper also includes at least one assist member connected to the assist mount and to operatively engage the infeed pan to assist an operator in moving a bulk weight of the infeed pan when the infeed pan is raised to a generally vertical position and lowered to a generally horizontal position by the operator.

The United States Court of Appeals for the Federal Circuit (CAFC) has stated in determining the propriety of a rejection under 35 U.S.C. § 103, it is well settled that the obviousness of an invention cannot be established by combining the teachings of the prior art absent some teaching, suggestion or incentive supporting the combination. See In re Fine, 837 F.2d 1071, 5 U.S.P.Q.2d 1596 (Fed. Cir. 1988); Ashland Oil, Inc. v. Delta Resins & Refractories, Inc., 776 F.2d 281, 227 U.S.P.Q. 657 (Fed. Cir. 1985); ACS Hospital Systems, Inc. v. Montefiore Hospital, 732 F.2d 1572, 221 U.S.P.Q. 929 (Fed. Cir. 1984). The law followed by our court of review and the Board of Patent Appeals and Interferences is that “[a] prima facie case of obviousness is established when the teachings from the prior art itself would appear to have suggested the claimed subject matter to a person of ordinary skill in the art.” In re Rinehart, 531 F.2d 1048, 1051, 189 U.S.P.Q. 143, 147 (C.C.P.A. 1976). See also In re Lalu, 747 F.2d 703, 705, 223 U.S.P.Q. 1257, 1258 (Fed. Cir. 1984) (“In determining whether a case of prima facie obviousness exists, it is necessary to ascertain whether the prior art teachings would appear to be sufficient to one of ordinary skill in the art to suggest making the claimed substitution or other modification.”)

The reference cited, either alone or modified, does not teach or suggest the claimed invention of claim 1. Specifically, the Background of the Invention section of the present application merely discloses a wood chipper having an infeed pan pivotally connected to an infeed hopper, which is raised and lowered by an operator to allow wood material to be placed on the infeed pan before entering the infeed hopper. The Background of the Invention section lacks at least one assist member connected to an assist mount and to operatively engage an infeed pan to assist an operator in moving a bulk weight of the infeed pan when the infeed pan is raised to a generally vertical position and lowered to a generally horizontal position by the operator. In the wood chipper of the Background of the Invention section, there is no assist member to assist

an operator in moving the infeed pan. There is no suggestion or motivation for modifying the wood chipper of the Background of the Invention section.

The present invention sets forth a unique and non-obvious combination of a wood chipper having an assist assembly that assists the operator in handling the bulk weight of the infeed pan when it is raised or lowered. The reference, if modifiable, fails to teach or suggest the combination of a wood chipper including a movable infeed pan, at least one assist mount connected to the wood chipper, and at least one assist member connected to the assist mount and to operatively engage the infeed pan to assist an operator in moving a bulk weight of the infeed pan when the infeed pan is raised to a generally vertical position and lowered to a generally horizontal position by the operator as claimed by Applicants. The Examiner has failed to establish a case of prima facie obviousness. Therefore, it is respectfully submitted that claim 1 and the claims dependent therefrom are allowable over the rejection under 35 U.S.C. § 103.

As to claim 5, claim 5 claims the present invention as a wood chipper including a movable infeed pan and at least one spring mount connected to the wood chipper. The wood chipper also includes at least one spring connected to the spring mount and to operatively engage the infeed pan to assist an operator in moving a bulk weight of the infeed pan when the infeed pan is raised to a generally vertical position and lowered to a generally horizontal position by the operator.

The reference cited, either alone or modified, does not teach or suggest the claimed invention of claim 5. Specifically, the Background of the Invention section of the present application merely discloses a wood chipper having an infeed pan pivotally connected to an infeed hopper, which is raised and lowered by an operator to allow wood material to be placed on the infeed pan before entering the infeed hopper. The Background of the Invention section lacks at least one spring connected to a spring mount to operatively engage an infeed pan to assist

an operator in moving a bulk weight of the infeed pan when the infeed pan is raised to a generally vertical position and lowered to a generally horizontal position by the operator. In the wood chipper of the Background of the Invention section, there is no spring to assist an operator in moving the infeed pan.

The present invention sets forth a unique and non-obvious combination of a wood chipper having an assist assembly that has one or more springs positioned to counter the force of the bulk weight of the infeed pan to raise and lower the infeed pan smoothly. The reference, if modifiable, fails to teach or suggest the combination of a wood chipper including a movable infeed pan, at least one spring mount connected to the wood chipper, and at least one spring connected to the spring mount and to operatively engage the infeed pan to assist an operator in moving a bulk weight of the infeed pan when the infeed pan is raised to a generally vertical position and lowered to a generally horizontal position by the operator as claimed by Applicants.

Further, the CAFC has held that “[t]he mere fact that prior art could be so modified would not have made the modification obvious unless the prior art suggested the desirability of the modification”. In re Gordon, 733 F.2d 900, 902, 221 U.S.P.Q. 1125, 1127 (Fed. Cir. 1984). The Examiner has failed to show how the prior art suggested the desirability of modification to achieve Applicants’ invention. Thus, the Examiner has failed to establish a case of prima facie obviousness. Therefore, it is respectfully submitted that claim 5 and the claims dependent therefrom are allowable over the rejection under 35 U.S.C. § 103.

As to claim 17, claim 17 claims the present invention as a wood chipper including an infeed hopper and an infeed pan pivotally connected to the infeed hopper. The wood chipper also includes at least one assist mount connected to the infeed hopper. The wood chipper further includes at least one assist member connected to the at least one assist mount and connected to the infeed pan and connected to the infeed hopper to assist an operator in moving a bulk weight

of the infeed pan when the infeed pan is raised to a generally vertical position and lowered to a generally horizontal position by the operator.

None of the references cited, either alone or in combination with each other, teach or suggest the claimed invention of claim 17. Specifically, the Background of the Invention section of the present application merely discloses a wood chipper having an infeed pan pivotally connected to an infeed hopper, which is raised and lowered by an operator to allow wood material to be placed on the infeed pan before entering the infeed hopper. The Background of the Invention section lacks at least one assist mount connected to an infeed hopper and at least one assist member connected to the assist mount and to the infeed pan and the infeed hopper to assist an operator in moving a bulk weight of the infeed pan when the infeed pan is raised to a generally vertical position and lowered to a generally horizontal position by the operator. In the wood chipper of the Background of the Invention section, there is no assist member to assist an operator in raising and lowering the infeed pan. There is no suggestion or motivation for modifying the wood chipper of the Background of the Invention section.

There is absolutely no teaching of a level of skill in the wood chipper art that a wood chipper can be constructed with at least one assist mount connected to an infeed hopper and at least one assist member connected to the assist mount and to an infeed pan and the infeed hopper to assist an operator in moving a bulk weight of the infeed pan when the infeed pan is raised to a generally vertical position and lowered to a generally horizontal position by the operator. The Examiner may not, because he doubts that the invention is patentable, resort to speculation, unfounded assumptions or hindsight reconstruction to supply deficiencies in the factual basis. See In re Warner, 379 F. 2d 1011, 154 U.S.P.Q. 173 (C.C.P.A. 1967).

The present invention sets forth a unique and non-obvious combination of a wood chipper having an assist assembly that assists the operator in handling the bulk weight of the

infeed pan when it is raised or lowered. The reference, if modifiable, fails to teach or suggest the combination of a wood chipper including an infeed hopper, an infeed pan pivotally connected to the infeed hopper, at least one assist mount connected to the infeed hopper, and at least one assist member connected to the assist mount and to the infeed pan and the infeed hopper to assist an operator in moving a bulk weight of the infeed pan when the infeed pan is raised to a generally vertical position and lowered to a generally horizontal position by the operator as claimed by Applicants. The Examiner has failed to establish a case of prima facie obviousness. Therefore, it is respectfully submitted that claim 17 and the claims dependent therefrom are allowable over the rejection under 35 U.S.C. § 103.

As to claim 24, claim 24 claims the present invention claimed as a wood chipper including an infeed hopper and a cutting assembly spaced from the infeed hopper. The wood chipper also includes a feed wheel assembly disposed between the infeed hopper and the cutting assembly to feed wood material from the infeed hopper to the cutting assembly. The wood chipper includes an infeed pan pivotally connected to the infeed hopper and at least one assist mount connected to the infeed hopper. The wood chipper further includes at least one assist member connected to the at least one assist mount and to operatively engage the infeed pan and to operatively engage the infeed hopper to assist an operator in moving a bulk weight of the infeed pan when the infeed pan is raised to a generally vertical position and lowered to a generally horizontal position by the operator.

The reference cited, either alone or modified, does not teach or suggest the claimed invention of claim 24. Specifically, the Background of the Invention section of the present application merely discloses a wood chipper having an infeed pan pivotally connected to an infeed hopper, which is raised and lowered by an operator to allow wood material to be placed on the infeed pan before entering the infeed hopper. The Background of the Invention section

lacks at least one assist member connected to an assist mount and to operatively engage the infeed pan and the infeed hopper to assist an operator in moving a bulk weight of the infeed pan when the infeed pan is raised to a generally vertical position and lowered to a generally horizontal position by the operator. In the wood chipper of the Background of the Invention section, there is no assist member to assist an operator in moving the infeed pan when the infeed pan is raised to a generally vertical position and lowered to a generally horizontal position by the operator. There is no suggestion or motivation for modifying the wood chipper of the Background of the Invention section.

The present invention sets forth a unique and non-obvious combination of a wood chipper having an assist assembly that assists the operator in handling the bulk weight of the infeed pan when it is raised or lowered. The reference, if modifiable, fails to teach or suggest the combination of a wood chipper including an infeed hopper, a cutting assembly, a feed wheel assembly disposed between the infeed hopper and a cutting assembly to feed wood material from the infeed hopper to the cutting assembly, an infeed pan pivotally connected to the infeed hopper, at least one assist mount connected to the infeed hopper, and at least one assist member connected to the assist mount and to operatively engage the infeed pan and the infeed hopper to assist an operator in moving a bulk weight of the infeed pan when the infeed pan is raised to a generally vertical position and lowered to a generally horizontal position by the operator as claimed by Applicants. The Examiner has failed to establish a case of prima facie obviousness. Therefore, it is respectfully submitted that claim 24 is allowable over the rejection under 35 U.S.C. § 103.

Obviousness under § 103 is a legal conclusion based on factual evidence (In re Fine, 837 F.2d 1071, 1073, 5 U.S.P.Q.2d 1596, 1598 (Fed. Cir. 1988), and the subjective opinion of the Examiner as to what is or is not obvious, without evidence in support thereof, does not

suffice. Since the Examiner has not provided a sufficient factual basis, which is supportive of his/her position (see In re Warner, 379 F.2d 1011, 1017, 154 U.S.P.Q. 173, 178 (C.C.P.A. 1967), cert. denied, 389 U.S. 1057 (1968)), the rejection of claims 1 through 24 is improper. Therefore, it is respectfully submitted that claims 1 through 24 are allowable over the rejection under 35 U.S.C. § 103.

Based on the above, it is respectfully submitted that the claims are in a condition for allowance or in better form for appeal. Applicants respectfully request reconsideration of the claims and withdrawal of the final rejection. It is respectfully requested that this Amendment be entered under 37 C.F.R. 1.116.

Respectfully submitted,

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